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*DPM-Mellon, LLC; DPM-Mellon, Ltd.;*  
*and Guy Castranova*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

.....X  
IN RE: REFCO SECURITIES LITIGATION : 07 MDL 1902 (JSR)  
.....X  
.....X  
KENNETH M. KRYS, *et al.* : 08 Civ. 7416 (JSR)  
Plaintiffs, :  
against :  
ROBERT AARON, *et al.*, :  
Defendants. :  
.....X

**SECOND SUPPLEMENTAL DECLARATION OF B. JOHN PENDLETON, JR.  
IN FURTHER OPPOSITION TO THIRD PARTY DEFENDANT'S  
MOTION TO DISMISS**

B. JOHN PENDLETON, JR., an attorney at law in the State of New Jersey, admitted *pro hac vice* in the United States District Court for the

Southern District of New York, and a member of the law firm of DLA Piper LLP (US), hereby declares as follows:

1. Attached hereto as Exhibit A is a true copy of excerpted portions of the rough draft transcript of the deposition of Brian Owens taken in this matter on April 18 and 19, 2012.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 20, 2012.

By: s/ B. John Pendleton, Jr.  
**DLA PIPER LLP (US)**  
B. John Pendleton, Jr.  
300 Campus Drive, Suite 100  
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*Attorneys for Defendants*  
*Derivative Portfolio*  
*Management LLC; Derivative*  
*Portfolio Management, Ltd.;*  
*DPM-Mellon, LLC; DPM-*  
*Mellon, Ltd.; and Guy*  
*Castranova*

## Exhibit A

Draft Transcript of Brian Owens.txt

Uncorrected draft transcript

1

2                   VIDEOGRAPHER: Good morning. This is the  
3 beginning of tape one, volume I, in the video deposition of  
4 Mr. Brian Owens. This is being held at the offices of  
5 William Fry in Fitzwilton house, Wilton Street, Dublin 2,  
6 here in the Republic of Ireland.

7                   This is being taken on 18 April 2012 at 9.07 am as  
8 indicated on the video screen. This deposition is being  
9 taken in the matter of Refco/Sphinx Kenneth Krys et al  
10 versus Christopher Sugrue et al.

11                  The case number is 07MD1902 (JSR) being heard  
12 before the United States District Court for the southern  
13 district of New York.

14                  The court reporter here today is Leanne Shipp of  
15 Merrill Legal Solutions, as is myself, the videographer,  
16 David Ross, also here of Merrill Legal Solutions. Would all  
17 of counsel introduce themselves please?

18                  MR. BEUS: Leo Beus and Lee Andelin on behalf of  
19 the plaintiff.

20                  MR. KARLAN: Mitchell Carr on behalf of the  
21 witness.

22                  VIDEOGRAPHER: And would the court reporter please  
23 swear in the witness.

24                  (witness sworn).

25

1

♀

11 Draft Transcript of Brian Owens.txt  
Q. Do you recall what your response was?  
12 A. Yes.  
13 Q. What was it?  
14 A. "Let me ask Gibson Dunn."  
15 Q. And what did Gibson Dunn -- after you talked  
16 to Gibson Dunn, what did you tell Mr. Aliprandi?  
17 A. Gibson Dunn --  
18 MR. KARLAN: Listen to the question he's asked  
19 you. After you spoke to Gibson Dunn, what did you tell  
20 Mr. Aliprandi?  
21 A. I didn't tell Mr. Aliprandi anything.  
22 MR. KARLAN: Okay.  
23 BY MR. BEUS  
24 Q. What position did you take as to whether or  
25 not there needed to be any disclosure?

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♀

1 Uncorrected draft transcript  
A. I forwarded Mr. Aliprandi a written response  
2 I had received from Gibson Dunn.  
3 Q. Which basically said?  
4 A. There was no related party transaction.  
5 Q. Okay. And you relied on Gibson Dunn?  
6 A. I relied on the advice, yes.  
7 Q. Okay.  
8 A. Would you mind terribly when it's convenient  
9 to you that we have a break for two minutes?  
10 MR. BEUS: If you need a break, I'll give you  
11 a break.  
12 A. Okay, thank you.  
13 VIDEOGRAPHER: Going off the record at 4:20 p.m.  
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Draft Transcript of Brian Owens.txt

14 in the videotaped deposition of Mr. Brian Owens.

15 (Break taken.)

16 VIDEOGRAPHER: And we're back to the record at

17 4:26 p.m. as indicated on the video screen.

18 BY MR. BEUS

19 Q. Did you ever yourself disclose Refco's role  
20 as the Suffolk tender to PlusFunds' management or any member  
21 of the Sphinx Board of Directors at any time before June of  
22 2005?

23 A. Before what date?

24 Q. June of 2005.

25 A. I did.

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♀

1 Uncorrected draft transcript  
Q. To who?

2 A. To the PlusFunds' management certainly.

3 Q. Who?

4 A. Each of those persons who received a tender  
5 offer, which would have been McMahon, Aaronson, Ewing, Rose,  
6 Staisil and Aliprandi.

7 Q. Did you do that in writing?

8 A. No, I physically gave -- I physically gave  
9 Aliprandi, Rose, Staisil, Ewing and Aaronson -- sorry,  
10 strike that, and McMahon the tender offer and Aaronson,  
11 I believe, I left on his desk.

12 Q. Any discussion with any of those people when  
13 you gave them the tender offer?

14 A. I should add I also told -- prior to June  
15 '05, I would have told Andrew Feighery.

16 Draft Transcript of Brian Owens.txt

17 Q. Did you --

18 A. To you --  
19 Q. Did you tell any -- did you provide in  
20 writing a disclosure that Refco was the tender to McMahon,  
Aaronson, Ewing, Rose, Staisil, Aliprandi or Feighery?

21 A. The tender of the Suffolk loans?

22 Q. of the Suffolk loans.

23 A. Yes. Feighery received -- he had copies of  
24 MKK documentation, which needed to be signed in connection  
25 with the tender offer, which was conducted in May.

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♀

1 Uncorrected draft transcript  
2 Q. Okay. Other than what's in the tender offer,  
3 do you have any recollection of the discussion with any of  
4 these folks: McMahon, Aaronson, Ewing, Rose, Staisil,  
Aliprandi or Feighery?

5 A. About?

6 Q. About the fact that Refco was the tender on  
7 the Suffolk loans?

8 MS. FEINSTEIN: Prior to --

9 A. Prior to 30 June?

10 BY MR. BEUS

11 Q. Prior to 30 June.

12 A. I had several conversations with Feighery  
13 about it, but not the others.

14 Q. Okay. And where was Feighery at the time?

15 A. Feighery typically was in Dublin.

16 Q. All right. And who did Feighery work for?

17 A. He was a sole practitioner practicing under  
18 the style of CGC Associates.

Draft Transcript of Brian Owens.txt

19 Q. Did he do work for Mr. Kavanagh?

20 A. No.

21 Q. Did he do work for anybody related to  
22 Suffolk?

23 A. Suffolk LLC? Yes, he did. He was the  
24 reporting accountant for MKK Ltd.

25 Q. Is there a privilege, an accountant/client

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1 Uncorrected draft transcript  
privilege in Ireland?

2 A. I'm not qualified to answer that. I don't  
3 know.

4 Q. When did Feighery resign from the SPHinx  
5 board?

6 A. When did he resign from the SPHinx board?  
7 I don't know that.

8 Q. Let me show you Exhibit 6343. I apologize,  
9 guys, this has been marked before. It should have had an  
10 exhibit number on it. This is --

11 MS. FEINSTEIN: I think it's 6342?

12 A. This is 6343. You said 6344?

13 MR. BEUS: 6342 is FAS 57.

14 A. And you said you were --

15 MR. BEUS: 6341 is UBS. I passed away --

16 MS. FEINSTEIN: Oh I'm sorry.

17 MR. KARLAN: So, what are we marking now?

18 MR. BEUS: We're marking the Suffolk --

19 A. Mr. Beus handed --

20 MR. KARLAN: Hang on.

DRAFT of Brian Owens Vol 2.txt

1                   Uncorrected Draft Transcript

2                   (DRAFT) Deposition of Brian Owens Volume II.

3

4                   VIDEOGRAPHER: Good morning. This is the  
5 beginning of tape one, Volume II in the continuation of the  
6 video deposition of Mr. Brian Owens. We are here on the  
7 record at 9:05 a.m. as indicated on the video screen and  
8 that's April 19, 2012. The witness is sworn.

9                   BY MR. ANDELIN

10                  Q. Okay, Mr. Owens, my name is Lee Andelin and  
11 I represent the plaintiffs. Do you understand that you're  
12 still under oath?

13                  A. I do.

14                  Q. Based on a conversation that we had yesterday  
15 with the Special Master, I'd like to go over a couple things  
16 that we went over yesterday and see if we can get answers to  
17 some of those questions. Who's paying for your defense in  
18 this action?

19                  MR. KARLAN: Pardon me, Mr. Andelin, I believe  
20 what the Special Master said was that you and I were to  
21 sculpt, which I wrote to you this morning, so at the first  
22 break let's go over the questions.

23                  MR. ANDELIN: All right.

24                  VIDEOGRAPHER: Excuse me, there's a very strong  
25 mobile phone signal coming through. Most likely to be down

18 DRAFT of Brian Owens Vol 2.txt  
for PlusFunds.

19 Q. Okay.

20 A. When that conversation concluded, the  
21 conversation between Andrew Feighery and myself, Martin  
22 Grennell looked to me and said, "How much of the action are  
23 you getting?"

24 Q. And what -- did you answer him?

25 A. Yes.

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1 Uncorrected Draft Transcript  
Q. What did you say?

2 A. I said, "Nothing".

3 Q. Okay. Where were you when this conversation  
4 was taking place?

5 A. At a hotel near Dublin aeromedical.

6 Q. And (inaudible)?

7 A. Yes.

8 Q. And you called Mr. Feighery on your cell  
9 phone?

10 A. Yes.

11 Q. And have those cell phone bills and records  
12 (overspeaking)?

13 A. Yes (overspeaking).

14 Q. And have you reviewed (overspeaking)?

15 A. I believe so.

16 Q. And is this call reflect odd there?

17 A. Yes.

18 Q. .

19 Q. And the month here is January now 2005?

20 A. 2005; correct.

DRAFT of Brian Owens Vol 2.txt

21           Q. Okay. After the conversation in January  
22 2005, do you know whether Mr. Feighery had access to  
23 additional confirmation concerning what was going on with  
24 respect to the Suffolk loans?

25           A. Yes.

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1                 Uncorrected Draft Transcript  
1           Q. Can you describe that, please?

2           A. In March of 2000 -- in late March 2005 or  
3 second half of March 2005, MKK had to execute certain  
4 documentation in connection with the Suffolk loans. The  
5 directors and secretary of MKK had to execute this  
6 documentation. And the secretary of MKK Ltd is an Irish  
7 corporate entity called charter house secretarial company,  
8 which company was at that time owned by Andrew Feighery and  
9 Andrew Feighery was asked by myself to execute a certain --  
10 certain resolutions on behalf -- in his facility as an  
11 officer or a director of charter house, who was the  
12 secretary of MKK Ltd.

13           Q. Okay, so is it correct that the aspect of the  
14 Suffolk loans that involved MKK Ltd required some formal  
15 documentation of the governing body of MKK Ltd?

16           A. Yes.

17           Q. And Mr. Feighery had to sign those papers?

18           A. Yes.

19           Q. Okay. And how did he learn that you wished  
20 him to do that?

21           A. I telephoned him in the first instance.

22           Q. Okay. And for a change we actually have the

23 DRAFT of Brian Owens Vol 2.txt  
bill at hand. Has this been marked?

24               okay, so let me show you what has been marked as  
25 Exhibit 6386

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1               Uncorrected Draft Transcript  
(Exhibit 6386 marked for identification)

2               Q. The first page of which is stamped  
3 BOMK00320805. Oh ask you, sir, if you can tell me what this  
4 is, please.

5               A. This is a copy of my cell phone bill dated 20  
6 April 2005, covering calls made in the period prior to that  
7 time.

8               Q. Okay. And would you look, please, at the  
9 page that is Bates stamped BOMK00320819?

10              A. Yes.

11              Q. Do you see the last call on that page to the  
12 United States?

13              A. No. That's --

14              Q. Not to the United States?

15              A. It indicates that the call is made from my  
16 cell phone, which was in the United States.

17              Q. Okay.

18              A. Calling the number.

19              Q. And this call that we're looking at is; am  
20 I correct, from -- on March 23, 2005?

21              A. That's correct.

22              Q. And do you recognize the number that is  
23 called there?

24              A. That is Andrew Feighery's cell phone number.

25              Q. Okay. And would you look at the next page,  
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DRAFT of Brian Owens Vol 2.txt

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1                   Uncorrected Draft Transcript  
1   please? One, two, three, four, five calls down. Again, 23  
2   March 2005. This one at 12.13.46. Do you see that?

3                   A. I do.

4                   Q. And whose telephone number is in a?

5                   A. That's Andrew Feighery's cell phone number.

6                   Q. Thank you very much, sir.

7                   Okay, staying with the time period prior to the  
8   end of March 2005, did you ever have any conversations with  
9   Randall Yanker about the fact that Suffolk -- the buying  
10   group -- was in discussions with Refco in the hope of  
11   obtaining a loan that it could use to buy shares of  
12   PlusFunds stock?

13                  A. I did.

14                  Q. And can you describe those conversations --  
15   is that one conversation or more than one?

16                  A. No, I had several conversations with Randy in  
17   this time period, and --

18                  Q. Let me ask you this first. Were they all in  
19   person or were some on the phone or --

20                  A. By and large they were -- from recollection,  
21   they were in his offices, in approximate earn.

22                  Q. In by city?

23                  A. New York.

24                  Q. And can you approximately tell me where that  
25   is?

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†

DRAFT of Brian Owens Vol 2.txt

Uncorrected Draft Transcript

1 A. It is a block or two from your offices.

2 Q. Okay. In mid-town Manhattan?

3 A. In mid-town Manhattan.

4 Q. All right. Tell me what you recall telling  
5 Mr Yanker prior to the end of March 2005 when you were in  
6 his office on this subject.

7 A. Apart from telling him that that the Suffolk  
8 Group, as you referred to it, were borrowing monies from  
9 Refco for the purchase of Gryphon and Bousbib's interests,  
10 I also had shared with him the fact that we would be forth  
11 come -- coming forward with a tender offer for series A  
12 shareholders, and that we would be hopeful of securing a 25  
13 million standby facility for PlusFunds.

14 Q. Okay. During all of these conversations  
15 you've described prior to the end of March 2005 with  
16 Mr Yanker and Mr. Feighery, did either gentleman ever  
17 express to you any objection or concern about the fact that  
18 money was being borrowed by Refco -- from Refco to buy  
19 shares of PlusFunds?

20 A. No.

21 Q. Diego Winegardner was on the Board of  
22 Directors of PlusFunds during the first quarter of 2005;  
23 correct?

24 A. Correct.

25 Q. Did you ever discuss with Christopher Sugrue